

LEGISLATIVE COUNCIL
FILE COPY

Calendar No. 375

94TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 94-382

AMENDING THE RULES OF THE SENATE RELATING TO OPEN COMMITTEE MEETINGS

SEPTEMBER 18 (legislative day, SEPTEMBER 12), 1975.—Ordered to be printed

Mr. CANNON, from the Committee on Rules and Administration,
submitted the following

REPORT

[To accompany S. Res. 9]

The Committee on Rules and Administration to which was referred the resolution (S. Res. 9), amending the rules of the Senate relating to open committee meetings, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and unanimously recommends that the resolution as amended be agreed to.

The Committee reported this resolution instead of the proposed rule changes embodied in Title I of S. 5 (which had previously been reported by the Committee on Government Operations, with an amendment in the nature of a substitute, and then by unanimous consent referred to the Committee on Rules and Administration for its consideration of Title I, because Title I of S. 5 concerned itself with Senate procedure, and partially with House procedure).

The Constitution, Article I, Section 5, provides in part that "Each House may determine the Rules of its Proceedings." Thus, the Committee took action on this resolution since the problem can well be handled in the Senate by simple resolution, obviating any necessity for the House of Representatives or the President of the United States of approving or disapproving changes in Senate rules—a right given solely to the Senate by the Constitution.

The form in which this resolution is recommended to the Senate for adoption emphasizes the responsibility of standing committees and subcommittees thereof to conduct their business in open session but, at the same time, reserves to each committee—which obviously is in a better position to know best what the public interest and the obligations of the committee to the public are—the right on any particular occasion to make decisions to accomplish such ends. Any Committee meeting at the commencement of a new Congress to adopt or to change

its rules relative to closed or open sessions would convene in open session, and could go into closed session only by vote of the Committee.

If a committee does not adopt special rules with regard to such procedure after a new Congress has convened and the membership thereof has been appointed, it would have to begin any of its meetings in open session and make its determinations to go into closed session for any desired purpose.

Any committee which has jurisdiction of legislation, or of any other matter, of a sensitive nature relative to confidentiality or secrecy could adopt particular rules of procedure with regard to how its meetings were to be conducted, particularly whether they were to be open or closed. This is significant because if a given proposal under consideration is of an extremely sensitive nature and the committee has to debate in open session whether or not it is to go into closed session, it could expose such critical information that there would then be no purpose for going into closed session.

All of the work of some committees might well be transacted in open session successfully in which case they would be free to adopt such procedures at the commencement of a new Congress. The work of other committees, because of the nature of the proposed legislation before them for action—as in the case of the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations—would have need for closed sessions for certain purposes which the Senate may not now be able to anticipate. This resolution as reported would give committees handling such sensitive matters, particularly national security and rights of witnesses, the right to prescribe procedures best fitted to meet their own situation.

It should be emphasized that any rules adopted by any committee at the commencement of a new Congress would be acted on by the membership of that current Committee, giving each new membership of a Committee an opportunity to pass on the kind of procedure it would prefer.

Select and special committees were omitted from this resolution because it is impossible for the Senate now to anticipate the nature or scope of hearings to be conducted by any such committees. The Senate when it passes a resolution to create a select or special committee could specify the procedures to be utilized, and it is obvious that the procedure of a special committee set up, for example, to investigate the CIA should operate under greater restrictions than one investigating small business practices.

Section 2 of the Rules Committee proposed substitute for Senate Resolution 9 would repeal section 133A (b) of the Legislative Reorganization Act of 1946, section 242 (a) of the Legislative Reorganization Act of 1970, and sections 102 (d) and (e) of the Congressional Budget Act of 1974, the need for which would be obviated by Senate Resolution 9 as reported by the Committee.

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Calendar No. 375

94TH CONGRESS }
1st Session }

SENATE

REPORT
No. 94-382

file
S.5

AMENDING THE RULES OF THE SENATE RELATING TO OPEN COMMITTEE MEETINGS

SEPTEMBER 18 (legislative day, SEPTEMBER 12), 1975.—Ordered to be printed

Mr. CANNON, from the Committee on Rules and Administration,
submitted the following

REPORT

[To accompany S. Res. 9]

The Committee on Rules and Administration to which was referred the resolution (S. Res. 9), amending the rules of the Senate relating to open committee meetings, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and unanimously recommends that the resolution as amended be agreed to.

The Committee reported this resolution instead of the proposed rule changes embodied in Title I of S. 5 (which had previously been reported by the Committee on Government Operations, with an amendment in the nature of a substitute, and then by unanimous consent referred to the Committee on Rules and Administration for its consideration of Title I, because Title I of S. 5 concerned itself with Senate procedure, and partially with House procedure).

The Constitution, Article I, Section 5, provides in part that "Each House may determine the Rules of its Proceedings." Thus, the Committee took action on this resolution since the problem can well be handled in the Senate by simple resolution, obviating any necessity for the House of Representatives or the President of the United States of approving or disapproving changes in Senate rules—a right given solely to the Senate by the Constitution.

The form in which this resolution is recommended to the Senate for adoption emphasizes the responsibility of standing committees and subcommittees thereof to conduct their business in open session but, at the same time, reserves to each committee—which obviously is in a better position to know best what the public interest and the obligations of the committee to the public are—the right on any particular occasion to make decisions to accomplish such ends. Any Committee meeting at the commencement of a new Congress to adopt or to change

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LEGISLATIVE GOVERNMENT
FILE COPY Calendar No. 343

94TH CONGRESS }
1st Session }

SENATE }

REPORT
No. 94-381

GOVERNMENT IN THE SUNSHINE ACT

SEPTEMBER 18 (legislative day, SEPTEMBER 12), 1975.—Ordered to be printed

Mr. CANNON, from the Committee on Rules and Administration and on behalf of the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 5]

The Committee on Rules and Administration, to which was referred title I of the bill (S. 5) to provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes, having considered the same, reports favorably thereon with an additional amendment, and recommends that the bill as further amended by the Committee on Rules and Administration do pass.

The Committee on the Judiciary, to which was referred section 202 of Title II of the bill (S. 5), has been unable to act thereon due to the press of other legislative business, but agrees to report the bill with the reservation of the right to file on the floor of the Senate proposed amendments to this legislation at a later date.

S. 5 would provide that, except under certain specified circumstances, all meetings of multiheaded Government agencies and of congressional committees would be open to the public.

This measure was reported by the Committee on Government Operations on July 31, 1975, with an amendment in the nature of a substitute. On August 1, 1975, by unanimous consent, the bill was referred to the Committee on Rules and Administration for consideration of title I only, with instructions to report back no later than September 15. This reporting date was subsequently extended to September 19.

Title I, which is the subject of this Committee's consideration, would—

- (1) Amend the Legislative Reorganization Act of 1946 to open to the public most meetings of Senate standing, select, and special committees (including all subcommittees), as well as meetings of joint committees and conference committees of the Congress;
- (2) Repeal the present rule Senate on the subject (paragraph 7(b) of Rule XXV); and

(3) Amend Rule XI of the Rules of the House of Representatives to open to the public most meetings of House standing, select, and special committees (including all subcommittees).

The Committee on Rules and Administration is reporting S. 5 with an additional amendment, the effect of which would be to strike Title I from the bill. While the Committee generally agrees with the concept of more openness in Government as expressed in S. 5, it believes that in respect to congressional committees such purpose would more properly be achieved by direct amendment of the Standing Rules of the Senate rather than by amendment of the Legislative Reorganization Act of 1946. Consequently the Committee is reporting Senate Resolution 9 with an amendment in the nature of a substitute for that purpose. (For details of that proposal see the report of the Committee on Rules and Administration to accompany S. Res. 9.)

The Committee on Rules and Administration has recommended that in respect to congressional committees the purposes of S. 5 be accomplished by direct amendment of the Standing Rules, rather than by amendment of the Legislative Reorganization Act of 1946, for the following reasons:

Section 5 of Article I of the Constitution provides that "Each House may determine the Rules of its Proceedings, * * *." In the Committee's judgment such a fundamental change in Senate procedure as further opening of committee meetings should be accomplished by simple resolution directly amending the Senate rules, thus obviating the necessity of participation by the House of Representatives or the President in a matter which is solely within the jurisdiction of the Senate itself.

The Legislative Reorganization Act of 1970 enacted certain provisions bearing on the procedure and organization of both Houses of Congress. In many instances that Act effected changes in the Standing Rules of the House of Representatives, while it left comparable or identical provisions relating to the Senate standing as provisions of public law, and not as comparable changes in the Standing Rules of the Senate. The Committee on Rules and Administration has undertaken a review of all such provisions of the Legislative Reorganization Acts (1946 and 1970) with the objective of ultimately incorporating all appropriate provisions into the Standing Rules themselves.

The Committee on Rules and Administration did not address itself to the matter of open meetings of joint committees of Congress, believing that subject should await experience gained under the new procedure in respect to standing committees, but by a vote of 7 to 1 it agreed to table Senate Resolution 12, which would have opened up conference committees. The vote to table Senate Resolution 12 was as follows:

YEAS—7

NAYS—1

Mr. Cannon

Mr. Hatfield

Mr. Pell ¹

Mr. Scott

Mr. Byrd

Mr. Griffin

Mr. Allen

Mr. Williams ¹

¹ Proxy.

It should be noted that since the Committee on Rules and Administration was directed by the Senate to confine its consideration only to Title I of S. 5, the Committee is thereby precluded from reporting the technical or conforming amendments in the other portions of S. 5 which would be required as a result of its recommended deletion of Title I. Thus, should the recommendation of the Committee on Rules and Administration be approved by the Senate, authority for making such necessary conforming amendments should be included within that approval.

ROLLCALL VOTE ON S. 5

On the motion by Mr. Robert C. Byrd that Title I of S. 5 be stricken and the remainder of the bill be reported favorably, the Committee voted as follows:

YEAS—7

NAYS—1

Mr. Cannon
Mr. Hatfield
Mr. Pell ¹
Mr. Scott
Mr. Byrd
Mr. Griffin
Mr. Allen
Mr. Williams ¹

¹ By proxy.

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